



Order under Subsection 87(1) Residential Tenancies Act, 2006

File Number: LTB-L-078813-22
TNL-35816-21

In the matter of: 409, 6 The Donway East
Toronto ON M3C1X7

Between: The Donway East Limited Landlord

And

Sophia Popovski Tenant

The Donway East Limited (the 'Landlord') applied for an order requiring Sophia Popovski (the 'Tenant') to pay the rent that the Tenant owes.

This application was heard by videoconference on December 21, 2022.

The Landlord's agent Richard Gabriel, the Landlord legal representative Howard Levenson and the Tenant and the Tenant's legal representative Jesse Miske attended the hearing.

Landlord witness Michael Warner, agent for the Landlord also attended the hearing.

Determinations:

1. The Tenant is no longer in possession of the rental unit. The tenancy was not lawfully terminated in accordance with a notice of termination, LTB order or agreement to terminate the tenancy. Therefore, the Tenant's obligation to pay rent ends on July 31, 2022, which is the earliest date she could have specified on a valid notice of termination.
2. The Tenant argued that she vacated at the end of October 31st, 2021, and put the keys in the mail slot. Landlord's Legal Representative alleges the Tenant vacated November 30, 2021. The Landlord believed the Tenant vacated November 30, 2021, but could not produce any evidence that the Tenant vacated November 30, 2021.
3. I am satisfied that the Tenant vacated the rental unit without giving the Landlord proper 60 days notice as required by the Act. In making this finding, I considered the Landlord's Representative's and the Tenant's Representative's submissions that the Tenant only gave 40 days notice to vacate the rental unit and that the Landlord did not



acknowledge the Tenant's notice to move out because it was not in compliance with the Act.

4. The yearly lease expired end of July 2022.
5. Under sections 44(4) and 47 of the *Residential Tenancies Act, 2006* ("Act"), the earliest termination date the Tenant could have properly specified on a notice of termination is July 30, 2022, the last day of the fixed term of the tenancy.
6. The parties agreed that the Tenant did not give proper notice to end the tenancy in accordance with the RTA. The parties agreed that the Tenant gave notice to vacate on September 21, 2021, with a termination date of October 31/22
7. The Tenant's legal representative stated that the Tenant left the unit because of issues with the unit.
8. Section 88 (1) of the Act provides that if the Landlord did not serve the Tenant with a Notice of Termination, and the parties did not agree to an early termination date, then the Tenant must provide the Landlord with 60 days notice to vacate the rental unit. If the Tenant fails to provide 60 days notice, the Landlord may seek an order for arrears covering the 60 period. Section 88 (1) of the Act reads as follows:

If a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has been made or the landlord has not given notice to terminate the tenancy, a determination of the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules:

1. If the tenant vacated the rental unit after giving notice that was not in accordance with this Act, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, had the notice been given in accordance with section 47, 96 or 145, as the case may be. The Landlord's Representative submitted that the Landlord tried to mitigate their loss of rental income. The Landlord advertised the unit for rent on various websites and social medial platforms. Despite the attempts to re-rent the unit in a timely manner the unit was not re-rented.
9. Because the Tenant did not give the Landlord 60 days notice to vacate the rental unit, pursuant to s.88 (1) of the Act, the Landlord is entitled to rent arrears up to July 31, 2022, the last day of the fixer period of this tenancy. This is the earliest termination date the Tenant could have provided in her N9 notice to the Landlord
 10. However, pursuant to s. 16 and s. 88(4), the Landlord had an obligation to try to minimize their losses by re-renting the unit as soon as they were aware that the Tenant was vacated. The Landlord's Representative submitted documentation to show that advertisements were effectuated and incentive programs in place to attract renters. I would also add that the Tenant had admitted that the residential complex was not fully rented and



that her unit was the only one rented on her floor. Despite the Landlord's attempt to re-rent the unit in a timely manner, the unit was not re-rented.

11. Based on the Landlord's testimony and the statement made by the Tenant the Landlord took reasonable steps to mitigate their loss.
12. The Tenant did not pay the total rent required to pay for the period from October 1, 2021 to July 1 2022.
13. The Landlord collected a last month's rent deposit in the amount of \$1,575.00 for which the Tenant was not credited.
14. The lawful rent is \$1,650.00. It is due the 1st day of each month.
15. The Tenant as not made any payments since the application was filed.
16. The rent arrears and daily compensation owing to July 31, 2022 are \$16,500.00
17. The Landlord collected a rent deposit of \$1,575 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy is terminated.
18. Interest on the rent deposit, in the amount of \$11.03 is owing to the Tenant for the period from August 20221 to July 31, 2022.
19. The Landlord incurred the cost of \$201.00 for filing the application and is entitled to reimbursement of those costs.

Section 82 Issues

20. The Tenant sought raise issues under subsection 82(1) of the Act. The Landlord objected on the basis that the Tenant failed to provide a detailed written description of these issues. The Tenant submitted a letter that was sent to the Landlord which makes reference to issues the Tenant had with the unit. This letter was sent to the Landlord and submitted to the Board in September 2021. I reviewed the letter and picture submitted into evidence and determined that it was vague and nature and does not set out specifics with respect to maintenance issues or other issues the Tenant had with the rental unit.
21. In these circumstances, I denied the Tenant's request to raise issues under s. 82 of the Act and informed the Tenant that she should file a separate Tenant's application if she intends to pursue these allegations against the Landlord.



It is ordered that:

1. The Tenant shall pay to the Landlord \$15,11.97. This amount includes rent arrears owing up to July 31, 2022, and the cost of the application, minus the rent deposit and interest owing.
2. If the Tenant does not pay the Landlord the full amount owing on or before February 18, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 19, 2023, at 5.00% annually on the balance outstanding.

February 7, 2023

Date Issued

Nicole Huneault

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.